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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,873	10/12/2001	Jon Buzzard	CRD0959	9691

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EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/975,873

Applicant(s)

BUZZARD ET AL.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on 02/10/2004 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/975,873 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 and 9-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation “a handle affixed to the inner shaft” is not defined in the specification and the drawing.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102 (b) as being anticipated by Gunderson (U.S. 5,776,142).

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Figure 1, Abstract and col. 2, lines 23-37 of Gunderson shows a medical device delivery system having all the limitation as recited in the above listed claims 1 and 8, including: an inner shaft (40); an outer sheath (50); a medical device (labeled in col. 4, lines 29-35) is within the outer sheath (50); item 24 (figs. 1 and 2) is considered a handle, i.e., a handle is defined as a part that is designed to be held or operated with the hand that is affixed to the inner shaft (40) and coupled with the outer sheath (50); and wherein a first (20) and second (30) independently moveable actuators (col. 4, lines 52-67 and col. 5, lines 1-16) adjust the longitudinal positions of the inner shaft and the outer sheath. Furthermore, the first and the second actuators provide a different amount of mechanical advantage (col. 8, lines 36-60).

Regarding claims 2 and 3, wherein one of the actuator provides a mechanical advantage of 1:1 (labeled as the pitch of the threads 28 may match the pitch of the coils in the stent, in col. 8, lines 37-44); and wherein the first actuator (20, see col. 4, lines 57-61) is rotated around a threaded base (32).

Regarding claims 4 and 5, wherein the second actuator (30) is defined by the handle (fig. 1); and wherein the first and second actuators are formed as a lever.

Regarding claims 6 and 7, wherein the first actuator provides a mechanical advantage greater than 1:1 (col. 8, lines 45-60); and wherein the handle and the first and the second actuators can operate by hand.

Regarding claims 9-10, fig. 2, item 25 is considered as a limit element. The limit element resists rotation between the inner shaft member and the tubular outer sheath.

Regarding claim 11, Figure 1, Abstract and col. 2, lines 23-37 of Gunderson shows a medical device delivery system having all the limitation as recited in the above listed claim,

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including: an inner shaft (40); an outer sheath (50); a medical device (labeled in col. 4, lines 29-35) is within the outer sheath (50); item 24 (figs. 1 and 2) is considered a handle, i.e., a handle is defined as a part that is designed to be held or operated with the hand that is affixed to the inner shaft (40) and coupled with the outer sheath (50); and wherein a first and second independently moveable actuator (20,30, col. 4, lines 52-67 and col. 5, lines 1-16) for adjusting the longitudinal positions of the inner shaft and the outer sheath; and wherein a limit element (25) limits the extent of travel for the second actuator. The limit element resists rotation between the inner shaft member (40) and the tubular outer sheath (50).

#### ***Response to Amendment***

4. Applicant's arguments with respect to claims 1, 8 and 11 have been considered but are moot in view of the new ground(s) of rejection. Applicant is asked to please refer to the modified prior art rejection above wherein examiner addresses applicant's concerns regarding prior art rejections. For example, a first (20) and second (30) independently moveable actuators (see col. 4, lines 52-67 and col. 5, lines 1-16) adjust the longitudinal positions of the inner shaft and the outer sheath.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *VN*  
March 1, 2004

  
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